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Report of the Working Group on the Universal Periodic Review*

Brazil

Addendum

Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review

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The Federative Republic of Brazil is pleased to express to the Office of the United Nations High Commissioner for Human Rights its support to the recommendations made to the country in the 3rd Cycle of the Universal Periodic Review Mechanism (UPR), except for the following: 136.20; 136.99; 136.110; and 136.142, of which the Brazilian government takes note. The following are the comments of the Brazilian government to some of the recommendations it supports:

136.9. The recent sanction of the Immigration Law, which replaces the 1980 Statute of Foreigners, places Brazil at the forefront of the protection to the rights of migrants. The new law is based on the guarantee of social, labor, and productive inclusion of migrants, social dialogue, and repudiation and prevention of xenophobia, according to the principles of the International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families. On the ILO Convention No. 189, see 136.16.

136.15. Draft Legislative Decree 298/2015, concerning the incorporation of the Arms Trade Treaty, is under discussion in the National Congress.

136.16. Draft Legislative Decree No. 627/2017, under discussion in Congress, provides for the internalization of ILO Convention No. 189. Brazil has already included in its legal system laws which are in line with the Convention. Constitutional Amendment No. 72/2013 has provided for domestic workers the same rights as those of other workers. Complementary Law No. 150/2015 has also been adopted to regulate Constitutional Amendment No. 72/2013.

136.17. In order for the ratification of ILO Convention No. 87 to be fully effective, there must be changes in trade union laws and regulations as well as in the Federal Constitution. Two drafts are under discussion in the National Congress: Legislative Decree No. 16/1984, which approves the text of Convention No. 87 related to freedom of association and protection of union rights; and Constitutional Amendment Proposal (PEC) No. 369/2005, which eliminates the constitutional obstacles to the ratification. On the rights of migrant workers, see 136.9.

136.32. The Brazilian National Curriculum, the theoretical-methodological framework for education in Public Security, is structured in four axes, among them, "Ethics, Citizenship, Human Rights, and Public Security" and "Ethnic-sociocultural Diversity, Conflicts, and Public Security". Regarding resistance killings, there have been permanent efforts to avoid them, but it is preferable not to set a reduction percentage.

136.36. Law 12.288/2010, also known as the Statute for the Promotion of Racial Equality, sets forth actions to guarantee to people of African descent the effective equality of opportunities, individual, collective and diffuse ethnic rights as well as fighting against discrimination and other forms of ethnic intolerance. The gender perspective has been included in these actions that ensure equal opportunities.

136.39. Bill No. 6,424/2013, which imposes to the healthcare services the mandatory notification of cases of violence against LGBT people, is under discussion at the National Congress.

136.40. Bills No. 7,582/2014 and 310/2014, under discussion at the National Congress, provide for the punishment for crimes of discrimination or prejudice based on sexual orientation or gender identity.

136.67. See 136.39 and 136.40. On the integration of human rights education into school curricula, the recommendation is contemplated by two policies of the Brazilian government: the University Pact for Human Rights and the Project School that Protects.

136.74. The federal government transfers funds to the federal units for the maintenance of the penitentiary system. As provided by the law that creates the National System to

Prevent and Combat Torture (Law 12,847/2013), the federal government should promote, guide and support the creation of regional committees and mechanisms, each federative unit being responsible for their effective creation. In order to make dialogue easier, federative units may join the National System.

136.75.

(a) Brazil acknowledges the urgent need for improvements in the prison system. In January 2017, the Commission to Reform the National Prison System was created, and its 34 members include representatives of the executive, legislative and judiciary branches, in addition to civil society. The Committee evaluates the national prison system, monitors implementation of the National Public Security Plan, with respect to the modernization and rationalization of the system, and formulates proposals for reform.

(b) Brazil has four federal prisons in operation, one under construction and another five to be constructed. There is no record of overcrowding in prisons of the Federal Penitentiary System, which is now in its 11th year of operation. By legal determination (Law No. 11,671/2008), the federal prisons must operate with a number of detainees below their full capacity.

(c) With respect to the state-level systems, the federal government promotes improvement policies in partnership with local governments. Between 2007 and 2016, 16,534 vacancies were created. The federal government currently manages 105 constructions and expansions of facilities, which will result in 43,444 new vacancies.

(d) The federal government freely provides reference architectural projects, engineering projects and budget spreadsheets for the construction of male and female prison facilities adapted to all bioclimatic regions of the country and in compliance with requisites for the humanization of imprisonment conditions. The project for construction of facilities for detainees in semi-open regime is currently under preparation.

136.78. The Brazilian State has taken a set of actions to reduce the prison population. The following actions can be highlighted: increase in the number of vacancies for the semi-open regime; custody hearings; electronic monitoring; application of alternative measures and sanctions; implementation of the National Public Security Plan.

136.85. Decree nº 6,085/2007 enacted in the Brazilian legal framework the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. This year, Brazil will join the Group of Friends of the Nelson Mandela Rules in the 26th session of the UN Commission on Crime Prevention and Criminal Justice.

136.87. See 136.74.

136.90. A national policy to promote diversity in the criminal justice system is currently under development. In partnership with the United Nations, the federal government has hired specialized technical consulting services for this purpose. The first outcome is the document entitled "Postulates and Principles for the National Policy of Diversity in the Criminal Justice System," available on the Ministry of Justice's website.

136.94. The Brazilian government's public policies aim at protecting the most vulnerable social groups. For incarcerated women, Law No. 13,434/2017 was enacted in April 2017, including a sole paragraph to article 292 of the Brazilian Code of Criminal Procedure which prohibits the use of handcuffs on pregnant women during their preparation for delivery and during labor, as well as during the puerperium.

136.101. After its establishment in the Federal District, on October 14 2015, the Custody Hearings Program began to operate in all 27 federation units.

136.104. In addition to the Office of the Union Public Defender, at the federal level, all 27 units of the federation have state-level public defender services.

136.105. In 2016, bill No. 554/2011 was adopted by the Federal Senate and is currently under discussion at the House of Representatives, as bill No. 6620/2016. Through the National Penitentiary Fund (FUNPEN), the federal government funds the implementation of Integrated Centers for Alternative Sanctions, as well as Electronic Monitoring Centers. The federal government has already established partnerships with 19 states to implement Integrated Centers with a total investment of R$36 million in the past six years. It is also important to highlight the publication of MJ Ordinance No. 495 in April 28th 2016, which instituted the National Policy for Alternative Sanctions to develop actions, projects, and strategies to combat mass incarceration and to broaden the application of alternative sanctions with a restorative approach as a substitute for incarceration.

136.114. The Program for the Protection of Human Rights Defenders is operating throughout the country. As a rule, the Brazilian laws and regulations assign to the federated states the jurisdiction to investigate and prosecute crimes. In exceptional cases, the Attorney-General can request a transfer of this jurisdiction from local courts to federal courts.

136.115, 136.116, 136.118 and 136.121.

See 136.114.

136.124. The Brazilian government maintains its efforts to eradicate all contemporary forms of slavery. The operation of the Special Mobile Inspection Group (GEFM) for combating contemporary slave labor is a good practice acknowledged by the international community. Due to its experience, Brazil has provided technical cooperation to other countries in this area.

136.127. The 2014 Protocol to the ILO Forced Labor Convention is under discussion in the executive branch of the Brazilian government for further referral to the National Congress. There are currently a number of initiatives following legal channels to eradicate forced labor, which are already fully compatible with the Protocol. Additionally, Brazil is part of the main conventions on the topic: ILO Conventions No. 29 and 105; the 1929 United Nations Slavery Convention; the American Convention on Human Rights; and the Geneva Slavery Convention.

136.130. In addition to the actions to combat labor in conditions similar to slavery, the Brazilian government provides means of reintegration and prevention set forth in the National Plan for the Eradication of Slave Labor, with measures for professional qualification, psychosocial care, and reintegration to the labor market. There are actions in the Single Registry for Social Programs to enable the inclusion of rescued people in public programs especially targeted to their needs.

136.148. Constitutional amendment No. 287/2016, about the reform of the Social Security System, is currently being discussed in Congress and will curb the distortions of income concentration. This reform will contribute to the reduction in inequality by speeding up the convergence between tax regimes of public and private sectors, establishing a minimum age for benefits, reducing the benefits of wealthier people and preserving the amounts paid to the poorest people.

136.155. Constitutional Amendment nº 95/2016 guarantees a minimum level of governmental expenditure in healthcare, actually increasing expenses in this area in 2017 due to a change in the method for calculating the minimum expenditure with public health actions and services (ASPS), which passed from 13% to 15% of Net Current Revenue, an approximate increase of R$ 10 billion, totaling R$ 114 billion.

136.156. The Unified Health System (SUS) ensures universal access with full care at all levels of complexity, based on the principle of equity promotion, which considers ethnic-racial and gender issues.

136.158. The Brazilian state will continue to ensure safe abortion for all women, under the terms of the law in force in the country, i.e. in cases of pregnancy due to rape, if there is no other way to save the life of the pregnant woman and in cases of anencephalic fetus.

136.160. See 136.158.

136.161. See 136.158.

136.177. Law No. 11,340, popularly known as Maria da Penha Law, is effective in Brazil since 2016 and has created mechanisms to prevent domestic and family violence against women, pursuant to the Federal Constitution and the international instruments on the issue. A new progress was achieved in 2015, when femicide was defined in law as an aggravated form of homicide (Femicide Law, No. 13,104/2015). Between 2015 and 2016, national guidelines to investigate, prosecute, and judge, with a gender perspective, violent deaths of women were implemented in five federative units. Three other states are in the process of adopting them. Additionally, the federal government promotes income generation actions for economically vulnerable women.

136.181. Reference to the Program MULHER, VIVER SEM VIOLÊNCIA [WOMEN, LIVING WITHOUT VIOLENCE], which aims at installing the so-called Casas da Mulher Brasileira [Houses of the Brazilian Women] in the 27 federative units, should be added to the comments to recommendation 136.177. Three Houses are operational and another four are in the final stage of construction. The federal government also carries out awareness campaigns. There is also a hotline for reporting cases of violence against women, the Disque 180 [Dial 180].

136.206. Nowadays, two Proposals of Constitutional Amendment are under discussion in the National Congress, the democratic locus par excellence for this exercise: PEC nº 15/2015 in the Federal Senate and PEC nº 32/2015 at the House of Representatives.

136.221. The granting of constitutional right to social-security benefits is based on the principles of equity and universality. Nowadays, 69.2% of the 80.3 million people enrolled in the Single Registry for Social Programs of the federal government – the main tool for identification and focusing of policies for low-income families – are people of African descent.